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Rulings to this effect are to be found in *Ramakristna Moodelly* v. *Soobraya Gramany* (1) and *Govind Appah* v. *Kondappah Sastrulu* (2).

The result of these decisions, we think, is that where payment of a debt is not being withheld for fraudulent or vexatious motives, but from a reasonable doubt as to the party entitled, the plaintiff is bound to produce a certificate under Act XXVII of 1860 before he can obtain a decree or execute a decree already obtained by the deceased, though he may institute his suit or apply for execution without such a certificate provided it is filed before decree or before execution issues.

In the present case, then, the order of the lower Court would appear to be technically wrong; but we should not be prepared to set the decree aside, or dismiss the suit on this ground alone.

[The decree of the Subordinate Judge was eventually set aside on the merits of the case, and on this ground, and the case remanded for further enquiry.]

J. V. W. *Case remanded.*

Before Mr. Justice Norris and Mr. Justice Beverley.

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DOMA SAHU (PLAINTIFF) *v.* NATHAI KHAN AND OTHERS (DEFENDANTS.)*

Mortgage—Foreclosure—Notice of foreclosure—Reg. XVII of 1806.

A notice of foreclosure signed by the Sherishtadar of the Judge's Court and bearing the seal of the Court, but not the signature of the Judge, *held*, following the principle of the decision in *Basdeo Singh* v. *Mata Din* (1), not to be a valid notice under Reg. XVII of 1806, s. 8.

THE material facts of this case were as follows:—

Certain properties, which were set out in the first paragraph of the plaint, were mortgaged by the father of the defendant No. 1 to the plaintiff, to secure a sum of Rs. 7,635 under a deed of conditional sale, dated the 17th December 1875, corresponding with the 3rd of Pous 1282. In the deed of conditional sale the term for repayment of the amount was fixed at two years.

* Appeal from Original Decree No. 22 of 1885, against the decree of Baboo Girish Chandra Chaterji, Rai Bahadur, Subordinate Judge of Mozufferpore, dated the 27th of December 1884.

(1) 6 Mad. Jur., 262.

(2) 6 Mad. H. C., 131.

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After the deed had been executed, the right of the original mortgagor in certain of the properties devolved upon the defendants in this suit, amongst others, the defendants Nos. 4 and 5. The plaintiff being desirous of foreclosing the mortgage and rendering the sale absolute and conclusive after the expiration of the period prescribed by s. 8 of Regulation XVII of 1806, followed, or rather purported to follow, the provisions of that section, and applied by a written petition to the Judge. The Judge, on receiving the petition, forwarded a copy of it together with a notice, to the defendants Nos. 4 and 5.

The notice bore the seal of the Court, and was signed by the sheristadar of the Court, but did not bear the signature of the Judge.

Subsequently a suit was brought for possession upon the foreclosure. When the suit came to be tried, the defendants Nos. 4 and 5 objected that the notice upon the defendant No. 5 Harihar Pershad had not been properly served, and also that, as a matter of law, no notice had been served upon him. These objections were based on the grounds that Harihar Pershad was not correctly described in the petition ; and that the notice was invalid as not having been signed by the Judge.

The Subordinate Judge upheld both the objections, and found that there was no valid service of notice on Harihar Pershad. From this decision the plaintiff appealed.

Baboo *Mohesh Chunder Chowdhuri* and Baboo *Umakali Mookherji* for the appellant.

Baboo *Kali Kissen Sen* and Baboo *Kullod Kinkur Rai* for the respondents.

The judgment of the Court (NORRIS and BEVERLEY, JJ.), after stating the facts and disposing of the objection as to the misdescription in the petition by saying that the defendants could not possibly have been misled by it, proceeded as follows :—

Another objection was raised before the Subordinate Judge, which is this : Section 8, Regulation XVII of 1806, says that the perwana which the Judge is to send with a copy of the petition shall be "under his seal and official signature." The Subordinate Judge has found, and his finding of fact is not questioned,

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that the notice, a copy of which was served upon the defendant Harihar Pershad, does not bear the official signature of the District Judge. It bears the seal of the Judge and the signature of the sheristadar of his Court. And upon the authority of a case of *Basdeo Singh* v. *Mata Din* (1) the Subordinate Judge has held that that is not a valid notice. We are of opinion that this view of the Subordinate Judge is right. We quite agree that the Allahabad decision does not go to the full extent to which the Subordinate Judge goes; and that the two cases differ in this respect—that in the Allahabad case there was only the official seal of the Court and no signature of the Judge or of any other officer, but in the present case there is the signature of the sheristadar. It would be almost impossible to hold, we think, that the sheristadar's signature is the official signature of the Judge. If there were any evidence from which we could have found as a fact that the Judge authorized the sheristadar to affix the official seal of the Court upon this perwana and authorized the sheristadar to sign his, the Judge's, name by signing his, sheristadar's, own name, the Subordinate Judge might have been in error. But there is absolutely no evidence upon the record, and one can hardly imagine any circumstances which would warrant the drawing of such an inference. We think, therefore, that this objection must hold good.

We have been asked by Baboo Mohesh Chunder that, if we find either or both of these objections to be good, to follow the decision, to which he has called our attention, of Mr. Justice Mitter and Mr. Justic Field in *Pergash Koer* v. *Mohabir Pershad Narain Singh* (2). We do not think that, under the circumstances of the case, we should be justified in doing this, because we are not satisfied that all parties, who are interested in the mortgaged properties, are before the Court. In that case apparently all the proper parties interested in the mortgaged properties were before the Court. In this case we are not satisfied that such is the case; and it might give rise to great injustice and certainly to considerable confusion, if we were to follow the course which

(1) I. L. R., 4 All., 276.
(2) I. L. R., 11 Calc., 582.

we are asked to follow. We cannot therefore accede to that application.

The result is that the appeal must be dismissed with costs.

Appeal dismissed.

J. V. W.

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APPELLATE CRIMINAL.

Before Mr. Justice Wilson and Mr. Justice Porter.

KALACHAND SIRCAR AND OTHERS *v.* QUEEN EMPRESS.°

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Evidence Act (I of 1872), s. 154—Hostile witness.

The mere fact that at a Sessions trial a witness tells a different story from that told by him before the Magistrate does not necessarily make him hostile. The proper inference to be drawn from contradictions going to the whole texture of the story is not that the witness is hostile to this side or to that, but that the witness is one who ought not to be believed unless supported by other satisfactory evidence.

IN this case there were four persons committed to the Sessions Court and charged as follows:—

Kalachand Sircar and Moser Sheikh with the murder of one Sital Chunder De, and with having wrongfully confined the said Sital Chunder De and four other persons, namely, Ketu, Adu, Lalu and Meher, and with causing hurt to them with the object of compelling them to confess to the commission of theft and of compelling them to restore the property stolen.

Prannath Shaha with abetting all the above offences.

And Prosunno Coomar Shome, head constable, with abetment of hurt only.

The facts as stated by the prosecution were: That on the 18th October 1885 the house of one Shibnath Sircar was broken into and property stolen therefrom; that on the night of the 19th October Ketu, Adu, Lalu and Meher were brought to the house of Prannath Shaha and were there tortured and beaten with the object of extorting a confession from them regarding the persons implicated in the theft from Shibnath Sircar; that at a later

° Criminal Appeal No. 173 of 1886, against the order passed by W. H. Page, Esq., Sessions Judge of Furridpore, dated the 4th of January 1886.